IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 660 of 2001

to

FIRST APPEALNo 680 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BALDEVBHAI MOHANBHAI PATEL

Appearance:
Mr.Umesh Trivedi, learned AGP for appellants
Mr.J.M.Patel for
MR AJ PATEL for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE J.R.VORA

Date of decision: 07/03/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

The lands of village Torna, Taluka Kapadwanj were sought to be acquired for the main Branch of Narmada Canal. For this purpose the Notification under Sec.4 was issued on 11.3.91 and 11.4.91. Notification under Sec.6 was issued on 4.11.91 and 29.11.91. The land owners claimed compensation to be paid at the rate of Rs.10,000/-- per Are i.e. Rs.100/-- per sq.mt. The Land Acquisition Officer passed the Award on 21.5.93 and 24.9.93 determining the rate of compensation to be paid at Rs.2.20 Ps. per sq.mt. for non irrigated land and Rs.3.30 Ps. per sq.mt. for irrigated land. The mater was taken for Reference under Sec.18 of the Land Acquisition Act.The Reference Court decided the rate of compensation to be paid at Rs.19.50 Ps. per sq.mt.

The trial court has relied upon the deposition of Ashokkumar Mahesh Chandra (Exh.30),; Map of Village Torna (Exh.15); Village Form Nos.7/12 (Exhs.17 to 25) and the Map showing the close proximity of villages Torna and Antroli (Ex.29). It also relied upon the Judgment in Land Acquisition Reference Case No.356/93 i.e. of village Antroli (Exh.27). It also relied upon the Judgment rendered in First Appeal Nos.4682/98 to 4807/98 of village Antroli. It also relied upon the judgment whereby the High Court dismissed the First Appeal No.4300/98 and confirmed the rate of compensation at Rs.19/-- per sq.mt. of village Lasundra.

The only ground on which the Judgment is sought to be assailed before us is that while passing the Award no orders were passed with regard to the deduction of 5% as contemplated under Sec.11A of the Gujarat State Amendment Act in the Land Acquisition Act (Gujarat Act 20 of 1965 dated 16.8.65) and without passing any order to this effect the Reference cases have been decided and no direction has been given to deduct 5% of the amount out of the awarded amount. This controversy with regard to the deduction of 5% has already been decided by us in First Appeals Nos.2129/95 to 2134/95 and First Appeals Nos.2136/95 to 2142/95 on 27.2.2001. According to Mr.Umesh Trivedi, learned AGP, out of 26 parcels of lands, 10 parcels of lands are new tenure lands and, therefore, in case of these new tenure lands, 5% Government's share shall be deducted and the payment shall be made accordingly. The Appeals are partly allowed to this extent only. Rest of the impugned award, as has been passed, shall remain intact. No order as to

costs.

It is expected that the due amount of compensation shall be deposited within a period of three months from the date the certified copy of this order is served upon the concerned authority by either of the parties.

(M.R.Calla,J)

(J.R.Vora,J)